

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

DIANA IVELISSE LAGARES SANTANA * CASE NO. 18-07127 ESL

Debtor(s) * CHAPTER 13

EMI EQUITY MORTGAGE, INC. * INDEX

Movant *

DIANA IVELISSE LAGARES SANTANA, *
ALEJANDRO OLIVERAS RIVERA,
CHAPTER 13 TRUSTEE TRUSTEE *

Respondent(s) *

**DEBTOR'S RESPONSE TO MOTION REQUESTING THAT STAY BE LIFTED
DOCKET NO. 16**

TO THE HONORABLE COURT:

NOW COMES, DIANA IVELISSE LAGARES SANTANA, the Debtor, through the undersigned attorney, and very respectfully states and prays as follows:

1. On January 30, 2019, EMI EQUITY MORTGAGE, INC. ("EMI") filed a motion entitled *Motion Requesting That Stay Be Lifted* (Docket No. 16) in the present bankruptcy case, basically alleging that on October 18, 2018 (pre-petition) EMI foreclosed the Debtor's residential real property ("the Property") and that since the present Chapter 13 case was filed on December 06, 2018, the Property is not property of the estate.

2. The Debtor respectfully states and alleges that as of the date of the filing of the present bankruptcy petition, the Debtor still had a property interest in the Property, thus, the automatic stay applies in the present case.

3. Since the Property is the Debtor's homestead and residential real property, the

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Debtor may provide for the curing of the pre-petition arrears owed to EMI through a Chapter 13 Plan and continue making direct mortgage loan payments to EMI under the terms of the Debtor's proposed Chapter 13 Plan (Docket No. 15), in the present case.

I. Undisputed facts:

4. The following are undisputed facts in the present case:
 - a. on August 31, 2018, the First Instance Court of Puerto Rico, Caguas Superior Court ("the State Court"), issued a *Judgment* in a civil foreclosure case entitled *E.M.I. Equity Mortgage, Inc. v. Diana Ivelisse Lagares Santana*, Civil Case No. E CD2017-0786 (802) Collection of Monies and Foreclosure;
 - b. on October 18, 2018, a public auction of the Property took place and the Property was adjudicated to EMI, for the sum of \$127,922.00;
 - c. on that same date, October 18, 2018, EMI filed a motion at the State Court entitled in the Spanish language "*Mocion en Solicitud de Confirmacion de Venta y Adjudicacion y Solicitando Que La Order Sea Expedida Certificada*", whereby EMI requested the State Court to order the confirmation of the aforestated auction process;
 - d. on that same date, October 18, 2018, the State Court issued an *Order* whereby the Court **denied** EMI's motion requesting confirmation of the foreclosure/auction process;
 - e. on December 6, 2018, the Debtor filed the present Chapter 13 bankruptcy

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case, listing EMI as a secured creditor, and on that same date, the Bankruptcy Court for the District of Puerto Rico issued an *Order* of automatic stay Order under 11 U.S.C. Section 362(a);

f. on December 20, 2018, the State Court issued an Order confirming the foreclosure auction process and judicial sales of the Property entitled in the Spanish language "*Orden de Confirmación de Adjudicación o Venta Judicial*";

g. that the aforesated Order of confirmation of 12/20/2018, provides, in pertinent part, as follows:

"Based on the above stated, the mortgage foreclosure process, including the sales and subsequent adjudication of the mortgage property executed on October 18, 2018, is hereby confirmed, since all the formalities required in the judicial process have been met.

The Court Orders the Marshall to execute a Public Deed for the property transfer, before a Notary that the seller designates...". "*Orden de Confirmación de Adjudicación o Venta Judicial*", dated December 20, 2018, at page 2. (**Our Translation**).

II. Legal Issue before the Bankruptcy Court

5. Based on the aforesated undisputed facts, the issue before the Bankruptcy Court for the District of Puerto Rico is whether or not the Debtor, as of the dated of the filing of the present bankruptcy petition, had a property interest in the Property, for the Property to become property of the estate and protected by the automatic stay order, in the present case.

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III. Argument

A. The Debtor’s property interest in the Property was still alive as of the date of the filing of the present bankruptcy case, thus, the Property is property of the estate.

6. Article 107 of the Mortgage Law of Puerto Rico (“*Ley del Registro de la Propiedad Inmobiliaria del Estado Libre Asociado de Puerto Rico*”, Law 210-2015, as amended), provides the procedure whereby a foreclosure/public auction and adjudication is confirmed by the State Court.

7. Article 107 provides that should the State Court deny the confirmation of the adjudication/sales of the auctioned property, the same (the judicial sales) will be set aside and will have no judicial value.

8. That it is undisputable that the State Court denied EMI’s request for confirmation of the transfer/judicial sales of the Property (10/18/2018) and that the Debtor filed the present bankruptcy case (12/06/2018) before the confirmation order was finally entered (12/20/2018) by the State Court.

9. That the Debtor has a “property interest” in the Property under Section 541 of the Bankruptcy Code, 11 U.S.C. Section 541, since as of the date of the filing of the present bankruptcy petition, December 6, 2018, EMI’s request for confirmation of the auction process and transfer/judicial sales deed had been denied by the State Court.

10. That since the confirmation of the auction process and transfer/judicial sales deed had been denied by the State Court, the Debtor’s interest in the Property was still alive and, thus, the Property became property of the estate as of the date of the filing of the

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present bankruptcy petition and the Debtor is entitled to a bankruptcy stay to protect the Property.

B. The 362 Motion (Docket No. 16) does not state a claim for relief

11. The 362 motion filed by EMI (Docket No. 16) fails to state a claim for relief since EMI's demand for relief is contradictory to its claim's allegations.

12. The 362 motion filed by EMI (Docket No. 16) provides the following demand for the relief sought:

"WHEREFORE, it is respectfully requested that this Motion BE GRANTED, and accordingly, that an order be entered Ruling that the property described herein **is protected by the stay....**". *Motion Requesting That Stay Be Lifted* (Docket No. 16).

WHEREFORE, the Debtor respectfully requests from this Honorable Court to grant the present response and deny EMI's *Motion Requesting That Stay Be Lifted*, Docket No. 16, in the above captioned Index.

I CERTIFY that on this same date a copy of this motion was filed with the Clerk of the Court using the CM/ECF filing system, which will send notification of same to: the Chapter 13 Trustee, Alejandro Oliveras Rivera, Esq.; Wallace Vazquez Sanabria, Esq., WVS Law LLC, 17 Mexico Street Suite D 1 San Juan PR 00917-2202, Counsel for EMI Equity Mortgage Inc.; I also certify that a copy of this motion was sent via regular mail to the Debtor/Respondent Diana Ivelisse Lagares Santana, PO Box 5354 Caguas PR 00726.

RESPECTFULLY SUBMITTED. In San Juan, Puerto Rico, 11th day of February, 2019.

/s/Roberto Figueroa Carrasquillo
USDC #203614
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